

Staff Summary Report



Council Meeting Date: 7/17/03

Agenda Item Number: 53

SUBJECT: Request adoption of Resolution No. 2003.53 authorizing and providing for the issuance and sale of not to exceed \$25 million aggregate principal amount of General Obligation Refunding Bonds, Series 2003, and not to exceed \$2.5 million payment amount of Certificates of Ownership of Supplemental Interest Payments pertaining to such bonds, to refund previously issued and outstanding bonds.

DOCUMENT NAME: 20030717fsjh01 **BOND SERVICE ADMINISTRATION (0203-01)** Resolution No. 2003.53.

SUPPORTING DOCS: Yes

COMMENTS: Financial Services is looking to take advantage of the current, historically low interest rate environment by refinancing certain outstanding maturities of the City's General Obligation Bonds Series 1994 (\$2.0 million), Series 1995 (\$11.2 million, and Series 1997 (\$7.7 million). The Series 1994 (original issue \$14.0 million), Series 1995 (original issue \$26.3 million) and Series 1997 (original issue \$14.5 million) bonds were issued in accordance with the Council-approved capital improvement programs. The issuance of the General Obligation Refunding Bonds would allow the City to realize savings of approximately \$700,000 in future debt service costs.

In addition to authorizing the sale of refunding bonds and certificates of ownership of supplemental interest payments, approval of the resolution will also provide certain terms, covenants and conditions concerning the bonds and the certificates; delegate certain authority; provide for the annual levy of a tax for the payment of the bonds and the certificates; authorize the appointment of a registrar, transfer agent and paying agent and a depository trustee; approve and authorize completion, execution and delivery of related documents; authorize the acceptance of a proposal for the purchase of the bonds and the certificates; authorize the redemption of bonds being refunded; authorize the preparation and distribution of a preliminary official statement and an official statement; and ratify all actions taken and to be taken with respect to the bonds and the certificates in furtherance of this resolution

PREPARED BY: Jerry Hart, Financial Services Manager (8505)

REVIEWED BY: Jerry Hart, Financial Services Manager (x8505)

LEGAL REVIEW BY: N/A

FISCAL NOTE: The issuance of the General Obligation Refunding Bonds would allow the City to realize savings of approximately \$700,000 in future debt service costs.

RECOMMENDATION: Staff recommends approval of Resolution No. 2003.53.

ADDITIONAL INFO: N/A

RESOLUTION NO. ____

RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$25,000,000 AGGREGATE PRINCIPAL AMOUNT OF CITY OF TEMPE, ARIZONA, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2003, AND NOT TO EXCEED \$2,500,000 PAYMENT AMOUNT OF CERTIFICATES OF OWNERSHIP OF SUPPLEMENTAL INTEREST PAYMENTS APPERTAINING TO SUCH BONDS, TO REFUND PREVIOUSLY ISSUED AND OUTSTANDING BONDS; PROVIDING CERTAIN TERMS, COVENANTS AND CONDITIONS CONCERNING THE BONDS AND THE CERTIFICATES; DELEGATING CERTAIN AUTHORITY; PROVIDING FOR THE ANNUAL LEVY OF A TAX FOR THE PAYMENT OF THE BONDS AND THE CERTIFICATES; AUTHORIZING THE APPOINTMENT OF A REGISTRAR, TRANSFER AGENT AND PAYING AGENT AND A DEPOSITORY TRUSTEE; APPROVING AND AUTHORIZING COMPLETION, EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AUTHORIZING THE ACCEPTANCE OF A PROPOSAL FOR THE PURCHASE OF THE BONDS AND THE CERTIFICATES; AUTHORIZING THE REDEMPTION OF BONDS BEING REFUNDED; AUTHORIZING THE PREPARATION AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT; AND RATIFYING ALL ACTIONS TAKEN AND TO BE TAKEN WITH RESPECT TO THE BONDS AND THE CERTIFICATES IN FURTHERANCE OF THIS RESOLUTION.

WHEREAS, certain general obligation bonds of the City of Tempe, Arizona (the "City") have been issued and are outstanding (the "Prior Bonds"); and

WHEREAS, the Mayor and Council of the City find that the issuance of not to exceed \$25,000,000 principal amount of General Obligation Refunding Bonds (the "Bonds") and certificates of ownership of supplemental interest payments pertaining to the Bonds in a payment amount of not to exceed \$2,500,000 (the "Certificates") for the purpose of refunding some or all of the Prior Bonds (the "Bonds Being Refunded") is necessary and advisable and is in the best interests of the City to lower the debt service payments due on its general obligation debt ; and

WHEREAS, in accordance with applicable law, the aggregate amounts of principal of and interest on the Bonds, including the interest represented by the Certificates, shall not exceed the aggregate principal of and interest on the Bonds Being Refunded which will become due from the date of issuance of the Bonds and the Certificates to the final maturity date of the Bonds Being Refunded; and

WHEREAS, the Mayor and Council will receive a proposal for the purchase of the Bonds and Certificates from RBC Dain Rauscher Inc. (the "Underwriter") in the form of a bond and certificate purchase agreement now on file with the City and the City desires that the Bonds and Certificates be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the Financial Services Manager and agreed to by the Underwriter; and

WHEREAS, by this resolution the Mayor and Council will approve the form of purchase agreement now on file and order the purchase agreement to be completed with the final terms of the Bonds and Certificates and entered into between the City and the Underwriter when the final

terms have been determined for the sale of the Bonds and Certificates (as so completed, the "Purchase Agreement"); and

WHEREAS, by this resolution the Mayor and Council will authorize the execution, issuance and sale of the Bonds and the Certificates to the Underwriter in accordance with the Purchase Agreement and at such prices, interest rates, principal amounts, maturity dates, payment amounts, payment dates and redemption features as may be set forth therein; and

WHEREAS, all acts, conditions and things required by the constitution and laws of the State of Arizona to happen, exist and be performed precedent to and in the enactment of this resolution have happened, exist and have been performed as so required in order to make this resolution a valid and binding instrument for the security of the Bonds and the Certificates authorized herein;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF CITY OF TEMPE, ARIZONA, as follows:

Section 1. Authorization. For purposes of providing funds to refund all or a portion of the Bonds Being Refunded, the City will issue and sell the Bonds, designated City of Tempe, Arizona, General Obligation Refunding Bonds, Series 2003, in an aggregate principal amount of not to exceed \$25,000,000 and the Certificates in an aggregate payment amount of not to exceed \$2,500,000 in accordance with the provisions of this resolution and delivered against payment therefor by the Underwriter. The Bonds and the Certificates will be issued to provide funds to refund all or a portion of the Bonds Being Refunded and to pay the costs of issuance of the Bonds and the Certificates. The Mayor and Council find and determine that it is expedient, necessary and advisable for the City to restructure a portion of its outstanding bonded debt to reduce the debt service on the City's outstanding bonds. The City hereby requires that the present value of the debt service savings, net of all costs associated with the Bonds and Certificates shall be not less than 2.0% of the principal amount of the Bonds Being Refunded.

Section 2. Terms.

A. Bonds. The Bonds will be dated such date as set forth in the Purchase Agreement, will mature on July 1 in some or all of the years 2004 through 2017, inclusive, and will bear interest from their date to the maturity or earlier redemption date of each of the Bonds provided that the bond yield, including the interest represented by the Certificates, shall not exceed 5.00%.

The principal amount maturing in each year, the interest rates applicable to each maturity, the optional and mandatory redemption provisions and any other final terms of the Bonds shall be as set forth in the Purchase Agreement and approved by the Mayor, any member of the Council or the Financial Services Manager and such approval shall be evidenced by the execution and delivery of the Purchase Agreement. The Bonds are expected to be initially issued in fully registered book-entry-only form in denominations equal to the respective year's maturity amount. If the book-entry-only system is discontinued, the Bonds will be in the denominations of \$5,000 each or integral multiples thereof. Interest on the Bonds (other than supplemental interest payments which shall be paid as set forth below) shall be payable semiannually on each January 1 and July 1 (each an Interest Payment Date) during the term of the Bonds, commencing January 1, 2004 (or on a later date as set forth in the Purchase Agreement).

B. Certificates. The Bonds may also bear supplemental interest which shall be payable to persons who are the registered owners of the detached Certificates. Ownership of the supplemental interest payments shall be evidenced by Certificates. Interest payments to the registered owners of the Certificates are hereby designated as supplemental interest payments. For purposes of any disclosure document interest payable to the registered owners of the appertaining Bonds may be designated as "A" interest and supplemental interest payments may be designated "B" interest.

The Certificates shall be paid on the dates and in the amounts and have the other final terms approved by the Mayor, any member of the Council or the Financial Services Manager. Such approval shall be evidenced by the execution and delivery of the Purchase Agreement. The supplemental interest represents interest on the outstanding Bonds commencing on the January 1 or July 1, as applicable, immediately preceding the specified payment date and ending on the day immediately prior to the specified payment date, at the interest rates set forth in the Purchase Agreement.

The Certificates are expected to be initially issued in fully registered book-entry-only form in denominations equal to the respective payment amount due on the payment date. If the book-entry-only system is discontinued, the Certificates will be in the payment amounts of \$1,000 each or integral multiples thereof.

C. Book-Entry-Only System. So long as the Bonds and the Certificates are administered under the book-entry-only system described herein, interest payments and principal payments that are part of periodic principal and interest payments shall be paid to Cede & Co. or its registered assigns in same-day funds no later than 2:30 p.m. (Eastern Time) on each interest or principal payment date or Certificate payment date (or in accordance with then-existing arrangements between the City and DTC). The City and the Registrar (as defined hereafter) and Paying Agent (as defined hereafter) on behalf of the City, are authorized to enter into an agreement (the "Letter of Representations") with DTC in connection with the issuance of the Bonds and Certificates, and while the Letter of Representations is in effect, the procedures established therein shall apply to the Bonds and Certificates.

D. Registration. If the book-entry-only system is discontinued, the Registrar's (as defined hereafter) registration books shall show the registered owners of the Bonds and also show, on a separate register, the registered owners of the Certificates (collectively, the owner or owners of the Bonds and the Certificates as shown on the Registrar's registration books shall be referred to as "Owner" or "Owners"). While the Bonds and Certificates are subject to the book-entry-only system, the Bonds and Certificates shall be registered in the name of Cede & Co., or its registered assigns. Both the Bonds and the Certificates will be administered by the Registrar in a manner which assures against double issuance and provides a system of transfer of ownership on the books of the Registrar in the manner set forth in the Bonds and the Certificates.

E. Payment. If the book-entry-only system is discontinued, interest on the Bonds (other than supplemental interest represented by the Certificates) will be payable on each Interest Payment Date by the Paying Agent (as hereafter defined) by check mailed to the Owner thereof at such Owner's address as shown on the registration books maintained by the Registrar as

of the close of business of the Registrar on the Record Date (as such term is defined in Section 10 of this resolution.

If the book-entry-only system is discontinued, principal of the Bonds and the payment amount evidenced by the Certificates and representing supplemental interest on the Bonds will be payable, when due, only upon presentation and surrender of the Bond or Certificate at the designated corporate trust office of the Paying Agent (as defined hereafter). Upon written request made twenty days prior to an interest payment date by an Owner of at least \$1,000,000 in principal amount of Bonds or payment amount of Certificates outstanding all payments of interest and, if adequate provision for surrender is made, principal and premium, if any, or payment amount shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Owner.

Notwithstanding any other provision of this resolution, payment of principal of and interest on any Bond or the payment amount of any Certificates that is held by a securities depository or Bonds and Certificates subject to a book-entry-only system may be paid by the Paying Agent by wire transfer in "same day funds".

F. Other Terms. The Bonds and the Certificates shall have such other terms and provisions as are set forth in Exhibits A and B, respectively, hereto and shall be sold under the terms and conditions set forth in the Purchase Agreement.

Section 3. Prior Redemption.

A. Optional Redemption. The Bonds may be subject to redemption as set forth in the Purchase Agreement.

B. Mandatory Redemption. The Bonds may be subject to mandatory redemption as set forth in the Purchase Agreement.

Whenever Bonds subject to mandatory redemption are purchased, redeemed (other than pursuant to mandatory redemption) or delivered by the City to the Registrar for cancellation, the principal amount of the Bonds so retired shall satisfy and be credited against the mandatory redemption requirements for such Bonds for such years as the City may direct.

C. Notice of Redemption. Notice of redemption of any Bond will be filed with the Paying Agent and mailed to the registered owner thereof at the address shown on the books of the Registrar not more than sixty (60) nor less than thirty (30) days prior to the redemption date. Notice of redemption may be given to any securities depository by mail, facsimile, wire or other generally accepted means of transmission of such notices. Failure to properly give notice of redemption shall not affect the redemption of any bond for which notice was properly given.

D. Effect of Call for Redemption. On the date designated for redemption by notice given as herein provided, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, and, if moneys for payment of the redemption price are held in separate accounts by the Paying Agent, interest on such Bonds or portions of Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security hereunder and the Owners of such Bonds

shall have no rights in respect thereof except to receive payment of the redemption price thereof and such Bonds shall be deemed paid and no longer outstanding.

E. Redemption of Less Than All of a Bond. The City may redeem an amount which is included in a Bond in the denomination in excess of, but divisible by, \$5,000. In that event, the registered owner shall submit the Bond for partial redemption and the Paying Agent shall make such partial payment and the Registrar shall cause to be issued a new Bond in a principal amount equal to the unpaid amount remaining on such Bond after the redemption to be authenticated and delivered to the registered owner thereof.

F. No Certificate Redemption Prior to Maturity. The Certificates are not subject to payment in advance of the stated respective Certificate payment date.

Section 4. Security. For the purpose of paying the principal and premium (if any) of, interest on and costs of administration of the registration and payment of the Bonds, including interest represented by the Certificates, there shall be levied on all the taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest and administration costs as the same becomes due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes are levied, assessed and collected. Taxes levied with respect to the payment of principal of and interest on the Bonds, including interest represented by the Certificates, shall be limited as follows: the total aggregate of taxes levied to pay principal of and interest on the Bonds, including interest represented by the Certificates, in the aggregate shall not exceed the total aggregate principal and interest to become due on the Bonds Being Refunded, calculated from the date of issuance of the Bonds to the final maturity date of the Bonds Being Refunded; and further, if the trust created to pay principal of and premium and interest on the Bonds Being Refunded is insufficient to make such payments when due, any taxes levied to pay principal and interest on the Bonds, including interest represented by the Certificates, shall first be applied to the payments of amounts due on the Bonds Being Refunded. The proceeds of the taxes shall be kept in a special fund of the City entitled the "Debt Service Fund" and shall be used only for the payment of principal, interest, premium, if any, or costs as above-stated.

Upon creation of the trust for payment of the Bonds Being Refunded, all moneys collected during the current fiscal year which would otherwise have been credited to the Interest and Redemption Funds for the Bonds Being Refunded shall be credited to the Interest and Redemption Funds created to service the Bonds and Certificates.

Section 5. Use of Proceeds. Upon the delivery of and payment for the Bonds and the Certificates in accordance with the terms of their sale, the net proceeds from the sale of the Bonds, together with proceeds from the sale of the Certificates, after payment of the costs and expenses of issuance, shall be set aside, together with certain funds of the City, if any, required to pay the Bonds Being Refunded, in a special trust fund maintained by a bank or trust company selected by the Financial Services Manager as depository trustee (the "Depository Trustee") and shall be used to pay, when due, principal of and interest and premium on the Bonds Being Refunded, all as more fully described in that certain Depository Trust Agreement dated the date of the Bonds (the "Depository Trust Agreement"), by and between the City and the Depository Trustee. Amounts credited to the trust, other than any beginning cash balance, shall be invested immediately in obligations issued by or guaranteed by the United States of America the maturing principal of and interest on which, together with any beginning cash balance, shall be sufficient to pay the principal of and premium and interest on

the Bonds Being Refunded as the same becomes due at maturity or prior redemption as provided herein.

Any balance of the net proceeds of the Bonds or the Certificates remaining after creation of the trust for the Bonds Being Refunded shall be transferred to the Debt Service Fund for the Bonds and the Certificates.

Section 6. Form of Bonds and Certificates. The Bonds and the Certificates shall be issued in book-entry-only form and, so long as the book-entry-only system is in effect, the Bonds and the Certificates shall be in substantially the forms of Exhibits A and B attached hereto and incorporated by reference herein, with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby or by the Purchase Agreement and are approved by those officers executing the Bonds and the Certificates; execution thereof by such officers shall constitute conclusive evidence of such approval. If the book-entry-only system is discontinued, the forms of the Bonds and the Certificates shall be adjusted to accommodate the requirements of non-book-entry bonds and certificates.

The Bonds and the Certificates may have notations, legends or endorsements required by law, securities exchange rule or usage. Each Bond and each Certificate shall show both the date of the issue and the date of such Bond's or Certificate's authentication and registration. The Bonds and the Certificates are prohibited from being converted to coupon or bearer form without the consent of the Mayor and Council and approval of bond counsel.

Section 7. Execution of Bonds, Certificates and Other Documents.

A. The Bonds and the Certificates shall be executed for and on behalf of the City by the Mayor, attested by the Clerk and countersigned by the Financial Services Manager by their manual or facsimile signatures and the City seal will be either photographically, mechanically or manually imprinted, affixed or reproduced on the Bonds and the Certificates. If an officer whose signature is on a Bond or Certificate no longer holds that office at the time the Bond or Certificate is authenticated and registered, such Bond or Certificate shall nevertheless be valid. A Bond or Certificate shall not be valid or binding until authenticated by the manual signature of an authorized representative of the Registrar. The signature of the authorized representative of the Registrar shall be conclusive evidence that such Bond or Certificate has been authenticated and issued pursuant to this resolution.

B. The form of the Purchase Agreement, as presented to the Council, is hereby approved and the Mayor, any member of the Council or the Financial Services Manager is hereby authorized to execute the Purchase Agreement on behalf of the City. The Mayor, any member of the Council or the Financial Services Manager shall cause the Purchase Agreement to be completed to reflect the terms of the Bonds and the Certificates, including the price at which the Bonds and the Certificates are sold and provisions for original issue premium or original issue discount with respect thereto. The execution and delivery of the Purchase Agreement, as completed, by the Mayor, any member of the Council or the Financial Services Manager shall be conclusive evidence of approval of such final terms and provisions.

C. The form of Registrar's Contract presented to the Mayor and Council and on file with the City concerning duties of the Registrar, Transfer Agent and Paying Agent for the

Bonds and the Certificates is hereby approved and the Mayor, the Clerk or the Financial Services Manager is hereby directed to execute such contract on behalf of the City with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and are approved by those officers executing the documents and cause such respective contract to be delivered. Execution by such officers shall constitute conclusive evidence of such approval.

D. The form of Depository Trust Agreement, as presented to the Mayor and Council and on file with the City, concerning the refunding of the Bonds Being Refunded is hereby approved and the Mayor, the Clerk or the Financial Services Manager is hereby directed to execute such contract on behalf of the City with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and are approved by those officers executing the documents. Execution by such officers shall constitute conclusive evidence of such approval and cause such respective contract to be delivered.

E. In order to comply with the provisions of Section 240.15c2.12, General Rules and Regulations, Securities Exchange Act of 1934 (the "Rule") unless an exemption from the terms and provisions of the Rule is applicable to the Bonds and Certificates, the Mayor, the Clerk or the Financial Services Manager is hereby authorized and directed to prepare, execute and deliver on behalf of the City a written agreement or undertaking for the benefit of the Owners (including beneficial owners) of the Bonds and the Certificates. The written agreement or undertaking shall contain such terms and provisions as are necessary to comply with the Rule including, but not limited to (i) an agreement to provide to each nationally recognized municipal securities information repository and to the Arizona state information depository, if one shall be so designated by the State of Arizona, the financial information or operating data presented in the final official statement as determined by mutual agreement between the City and the underwriter and audited financial statements of the City and (ii) an agreement to provide material events disclosure to national recognized municipal securities information repositories or to the state information depository hereinafter designated and the Municipal Securities Rulemaking Board.

F. The preparation of a preliminary official statement in a form that is deemed "final", as hereafter described, is hereby authorized and approved and its distribution by the Underwriter is hereby authorized and approved. Such preliminary official statement shall be in a form that is approved and deemed "final" for all purposes of the Rule, by the Mayor or the Financial Services Manager. The City will cause a final official statement (the "Official Statement") in substantially the form of the preliminary official statement referred to above to be prepared and distributed within seven business days from the execution of the Purchase Agreement. The Mayor or the Financial Services Manager are authorized to approve, execute and deliver the Official Statement on behalf of the City and the execution by such officer shall be deemed conclusive evidence of such approval. The preliminary official statement and the Official Statement may be prepared in conjunction with, and may be part of the same document, the preliminary official statement and the Official Statement for any other bonds or obligations which may be issued by the City.

Section 8. Mutilated, Lost or Destroyed Bonds or Certificates. In case any Bond or Certificate becomes mutilated or destroyed or lost, the Registrar shall cause to be executed and delivered a new Bond or Certificate of like date and tenor in exchange and substitution for and upon the cancellation of the mutilated Bond or Certificate or in lieu of and in substitution for the Bond or Certificate destroyed or lost, upon the owner's paying the reasonable expenses and charges

of the City in connection therewith and, in the case of the Bond or Certificate destroyed or lost, filing with the Registrar of evidence satisfactory to the Registrar that such Bond or Certificate was destroyed or lost, and furnishing the Registrar with a sufficient indemnity bond pursuant to § 47-8405, Arizona Revised Statutes.

Section 9. Acceptance of Offer; Sale of Bonds and Certificates; Purchase Agreement Approval. The Underwriter proposes to purchase the Bonds and the Certificates pursuant to the Purchase Agreement submitted to and on file with the City and such proposal as supplemented by the final terms as contemplated by this resolution is hereby accepted. When the final terms of the Bonds and the Certificates are known, the Purchase Agreement shall be finalized. The Mayor, any member of the Council or the Financial Services Manager are authorized and directed to cause the Purchase Agreement to be completed and executed; provided, however, that the parameters of this resolution shall govern the Purchase Agreement and neither the Mayor, any member of the Council or the Financial Services Manager is authorized to insert in the Purchase Agreement any terms or conditions which would be contrary to this resolution. Upon the completion, execution and delivery of the Purchase Agreement, the Bonds and the Certificates are ordered sold to the Underwriter pursuant to the Purchase Agreement.

The Financial Services Manager is hereby authorized and directed to cause the Bonds and the Certificates to be delivered to or upon the order of the Purchaser upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the Purchase Agreement.

Section 10. Registrar and Paying Agent. The City will maintain an office or agency where Bonds and Certificates may be presented for registration or transfer and an office or agency where Bonds and Certificates may be presented for payment (the "Paying Agent"). The Financial Services Manager may appoint one or more co-registrars or one or more additional Paying Agents. The Registrar and Paying Agent may make reasonable rules and set reasonable requirements for their respective functions with respect to the owners of the Bonds and Certificates.

Initially, Bank One Trust Company, N.A. shall act as Registrar and Paying Agent with respect to the Bonds and the Certificates. The City may change the Registrar or Paying Agent without notice to or consent of Owners of the Bonds and the Certificates and the City may act in any such capacity.

Each Paying Agent shall be required to agree in writing that the Paying Agent will hold in trust for the benefit of the Owners of the Bonds and the Certificates all moneys held by the Paying Agent for the payment of principal of and interest and any premium on the Bonds, including interest represented by the Certificates.

The Registrar may appoint an authenticating agent acceptable to the City to authenticate Bonds and Certificates. An authenticating agent may authenticate Bonds or Certificates whenever the Registrar may do so. Each reference in this resolution to authentication by the Registrar includes authentication by an authenticating agent acting on behalf and in the name of the Registrar and subject to the Registrar's direction.

The Registrar shall keep separate registers for the Bonds and the Certificates. One register will show the Owners of the Bonds and any transfer of the Bonds and one register will

show the Owners of the Certificates and any transfer of the Certificates. When Bonds or Certificates are presented to the Registrar or a co-registrar with a request to register transfer, the Registrar shall register the transfer on the registration books if its requirements for transfer are met and shall authenticate and deliver one or more Bonds or Certificates registered in the name of the transferee of the same principal amount, maturity and rate of interest as the surrendered Bonds or payment amount and payment dates as the surrendered Certificates. All transfer fees and costs shall be paid by the transferor. The "Record Date" for the Bonds shall be the close of business of the Registrar on the fifteenth day of the month preceding an interest payment date. The Registrar may, but shall not be required to, transfer or exchange any Bonds during the period commencing on the Record Date to and including the respective interest payment date. If the Registrar transfers or exchanges Bonds within the period referred to above, interest on such Bonds shall be paid to the person who was the Owner at the close of business of the Registrar on the Record Date as if such transfer or exchange had not occurred.

The Registrar shall authenticate Bonds for original issue up to \$25,000,000 in aggregate principal amount and not to exceed \$2,500,000 aggregate payment amount of Certificates upon the written request of the Financial Services Manager. The aggregate principal amount of Bonds or the payment amount of Certificates outstanding at any time may not exceed those amounts except for replacement Bonds or Certificates as to which the requirements of the Registrar and the City are met.

Section 11. Resolution a Contract. This resolution shall constitute a contract between the City and the Owners and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the Owners of the Bonds or the Certificates then outstanding. The performance by the Mayor and Council of the obligations in this resolution, the Bonds or the Certificates and the other agreements listed in Section 7 of this resolution is hereby authorized and approved.

Section 12. Ratification of Actions. All actions of the officers and agents of the City which conform to the purposes and intent of this resolution and which further the issuance and sale of the Bonds and the Certificates as contemplated by this resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this resolution.

Section 13. Bond Insurance or Credit Enhancement. The Financial Services Manager is hereby authorized to expend or cause to be expended Bond or Certificate proceeds to purchase bond insurance or other credit enhancements for the Bonds and the Certificates if deemed to be in the City's best interest.

Section 14. Qualified Tax-Exempt Obligations. The Bonds and the Certificates are not "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Section 15. Tax Covenant. In consideration of the purchase and acceptance of the Bonds and the Certificates by the owners thereof and, as authorized by Arizona Revised Statutes, Title 35, Chapter 3, Article 7, and in consideration of retaining the exclusion of interest

income on the Bonds, including interest income represented by the Certificates, from gross income for federal income tax purposes (including interest represented by the Certificates), the City covenants with the Owners from time to time of the Bonds and the Certificates to neither take nor fail to take any action which action or failure to act is within its power and authority and would result in interest income on the Bonds (including interest represented by the Certificates) becoming subject to inclusion as gross income for federal income tax purposes under either laws existing on the date of issuance of the Bonds and the Certificates or such laws as they may be modified or amended.

With respect to the Bonds and Certificates herein authorized to be sold, the City or a partner of Gust Rosenfeld P.L.C., bond counsel to the City ("bond counsel"), is authorized to execute and file on behalf of the City information reporting returns and to file or deliver such other information as may be required by Section 149(e) of the Code.

The Mayor and Council hereby agree that the City will comply with such requirements and will take any such actions as in the opinion of bond counsel are necessary to prevent interest income on the Bonds, including interest represented by the Certificates, from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by bond counsel; to pay to the United States of America any required amounts representing yield reduction payments or rebates of arbitrage profits relating to the Bonds and the Certificates; filing forms, statements and supporting documents as may be required under the federal tax laws; and limiting the term of and yield on investments made with moneys relating to the Bonds and Certificates.

Section 16. Redemption of Certain Bonds. Some or all of the maturities of the Bonds Being Refunded may be refunded. Those selected for refunding are referred to herein as the Bonds Being Refunded. The Mayor and Council hereby order that the maturities of the Bonds Being Refunded and the times that the Bonds Being Refunded will be redeemed will be determined by the Financial Services Manager and will be as set forth in the Official Statement.

Section 17. Severability. If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal, invalid or unenforceable, such decision will not affect the validity of the remaining portions of this resolution. The Mayor and Council hereby declare that this resolution would have been adopted and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Bonds and Certificates pursuant hereto even if any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this resolution may be held illegal, invalid or unenforceable.

PASSED, ADOPTED AND APPROVED by the Council of City of Tempe,
Arizona, on July 17, 2003.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Bond Counsel

Exhibit A: Bond Form
Exhibit B: Certificate Form

CERTIFICATION

I, Kathy Matz, the duly appointed and acting City Clerk of the City of Tempe, Arizona, do hereby certify that the above and foregoing Resolution No. ____ was duly passed by the City Council of the City of Tempe, Arizona, at a regular meeting held on July 17, 2003, and the vote was ____ aye's and ____ nay's and that the Mayor and ____ Council Members were present thereat.

DATED: _____, 2003.

City Clerk